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# Legal character of the agricultural agreements in the Polish legal system

## 1. Introduction

The issue of agricultural agreements is especial importance for the agricultural law. For it is strictly connected with separation of the agricultural law assumed by the Polish and West-European doctrine. As argued by part of representatives with approach to the European agricultural law doctrine, namely adoption of specific legislation covering civil law agreements concerning agricultural relationship provided the grounds for this law theory separation.<sup>1</sup> Searching for interrelations between the agricultural agreements separation and the idea regarding the agricultural law autonomy is as much difficult as the agricultural law doctrine fails to formulate the criteria in concern uniformly. So far, in the Polish doctrine the matter with regard to the definitions of agricultural agreements and the criteria to separate them has not been a subject matter of a monographic study, although postulates for the need to separate a category of agricultural agreements are formulated.<sup>2</sup> Moreover, the undoubted inconvenience is also the lack of judicial decisions concerning the discussed issue, which should be the basis for conducted considerations. Shaping the judicature practice would probably allow more comprehensive development of the issue presented.

The paper is purposed to submit the legal character of agreements concluded by farmers, as well as by other entities conducting economic activity

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<sup>1</sup> Cf. for more details: A. Lichorowicz, *Ewolucja polskiej definicji prawa rolnego na tle doktryny zachodnioeuropejskiej* [Evolution of the Polish definition of agricultural law against the West-European doctrine], *Kwartalnik Prawa Prywatnego*, 1997, sentence 4, p. 595 ff.

<sup>2</sup> The criteria for agricultural agreements separation in the Polish agricultural law doctrine have been noted by A. Stelmachowski, in: *Prawo rolne* [Agricultural Law], Warsaw 2005, p. 15 ff.

in rural areas. However, the author's assumption is not a detailed juridical analysis of legal solutions adopted under particular agreements, but rather an attempt to answer a question whether in the Polish legal system separation of a separate agreements category has been provided, i.e. agricultural agreements, and if any, to indicate the criteria of their separation.

Positive response to this question shall allow the attempt to provide some systematics of agricultural agreements, in particular with reference to the applied methods for regulations of legal relations. Therefore, the indication whether the agreements concluded are typical civil and legal agreements, or whether they are agreements of public and regulatory character. The taken up issues are extremely broad, and deliberations shall be carried out in the public, as well as private law and cover not only substantive issues but procedural ones, as well connected with claiming damages. In view of editorial framework, essential attention will be focused on the indication of legal character of the agreements concluded by entities operating in rural areas. Besides, the author's approach to the subject also enables to present the procedure for settlement of disputes in agricultural cases arisen from fulfillment of such agreements.

## **2. Criteria for separation of agricultural agreements**

Assumption of affiliation category of agricultural law norms to the public law of the private law shall enter into distinction of two models the agricultural law development. The German model based in particular on the public law norms was shaped in connections with agrarian reforms, enfranchisement and settlement policy. While the Roman model of the agricultural law development, where the agricultural law is derived in the greater degree from the civil law has been separated through providing the norms including regulations specific for agriculture, only.<sup>3</sup>

The Polish for establishing agriculture law autonomy refers to the second of the models presented. Therefore, it is to be at least briefly identifying the view of the European doctrine concerning the criteria for separation of agricultural agreements. Thus, they may be a starting point for searching the criteria to separate agricultural agreements in the Polish legal system.

The first view group representatives indicate a personal situation criterion to separate agricultural agreements, where approach to legislation protecting

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<sup>3</sup> In the Polish agriculture law doctrine the need to establish separation criteria for agricultural agreements was pointed out by A. Stelmachowski, *op. cit.*, p. 15 ff.

in a particular way a farmer profession justifies this concept. According to the supporters, the agricultural agreements are the ones which describe a farmer's legal position.<sup>4</sup>

The other view group refers to subject-matter criterion. According to it, the agricultural agreements are the ones which regulate the activity of broadly understood farms, while an agricultural holding in more recent literature. The referred view is common in the modern Italian<sup>5</sup> and Spanish<sup>6</sup> doctrine. In the Polish agricultural law science this view is expressed in postulatory layer. Through evolution of the notions no separation of an agricultural holding category occurred. However, the view on recognition of the farm as a specific enterprise category and the agricultural activity as an economic activity was fully accepted.<sup>7</sup>

Currently, the most widespread distinction of agricultural agreements based on the criterion of conducted agricultural activity and agricultural land use. The attempt to precise the subject-matter criterion in the Italian doctrine undertook Antonio Carrozza. He indicated that the circle of agricultural law norms addressees is significantly wider than the circle of agricultural entrepreneurs. Thus, separation of agricultural law institutions or agricultural agreements may appear merely on the basis of fundamental concepts. And among them he included legal relations based on specific principles, recognized by the agricultural law only. To avoid discretion in the assumed classification, he created a special criterion of the agricultural character institution (*agrarietà*). By virtue of this criterion, the agricultural law character features the agreements, or wider the referred institutions, which relate to the production based on biological laws, where natural, climate conditions determine the

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<sup>4</sup> Cf. the reference formulated in France: L. Lorvellec, *Le contenu du droit rural français*, Rivista di Diritto Agrario 1986, no. 1.

<sup>5</sup> The view assumed in the Italian doctrine due to separation of a definition of legal agricultural enterprise (*impresa agraria*) in the civil code, compare B. Rossi, *Istituzioni di diritto agrario*, Bologna 1954, p. 8; G. Galloni, *Lezioni sull' diritto dell'impresa agricola*, Naples 1980, p. 20; G. Lazzara, *Impresa agricola – disposizioni generali*, Bologna 1980, p. 11. This stream in the modern Italian doctrine is represented by L. Costato, in: *Trattato breve di diritto agrario e comunitario*, Padua 1994, p. 3, and A. Germano, *Manuale di diritto agrario*, Turin 1995, p. 20.

<sup>6</sup> In the Spanish doctrine the view represented by A. Ballarin Marcia, *Estudios de Derecho Agrario*, Saragossa 1975, p. 123.

<sup>7</sup> Similarly, *inter alia* R. Budzinowski, *Prawo rolne* [Agricultural Law], ed. by P. Czechowski, Warsaw 2015, pp. 111–114; B. Jeżyńska, *Rolnik jako przedsiębiorca* [Farmer as an entrepreneur], Lublin 2008, p. 276; J. Bieluk, *O potrzebie wprowadzenia do prawa polskiego pojęcia przedsiębiorstwa rolnego* [On the need to implement in the Polish law a notion of an agricultural enterprises], *Studia Iuridica Agraria* 11, 2013, pp. 147–161.

production process, and which cannot be under exact influence of an agricultural producer.<sup>8</sup>

Here, it is worth noting that the criterion as formulated need to be supplemented with the aspects relating to rural development, which constitutes Pillar II of the Common Agricultural Policy (CAP). In fact, the agriculture is not mono-functional focused to the agricultural production function, but it has multi-functional dimension, where it also exercises functions within environmental protection and social functions. It seems that fulfillment of such additional functions in rural areas can be also satisfied by other entities, which act the functions in the referred areas (entrepreneurs conducting economic activity in rural areas, rural municipalities or urban and rural municipalities, forest districts, cultural institution). To the extent it is worth citing the view on the matter of Prof. J. Hudault, who pointed out that the agricultural law means the law of agricultural environment and its users.<sup>9</sup>

Taking this assumption into consideration, it should be noted that some individualities, also outlined in the Polish doctrine and decisive on the specific character of such agreements, which provide the agricultural law principles, decide on classification of agreements as the agricultural ones. The most essential principle assigned by the legislator with the constitutional principle is family farm protection which constitutes the basis for the agricultural system of the Republic of Poland.<sup>10</sup> The principle of protection of agricultural producer's workshop is also of the significant importance. In means in particular, special protection of persons conducting agricultural holdings towards persons not conducting agricultural activities, but residing or conducting non-agricultural activities in rural areas (operating in rural areas). This principle shall also lead to ensure the desired agrarian structure of agricultural holdings in Poland. After Poland's accession to the EU in 2004 the principle of protection of income level for rural population, in particular through assurance of the support to agricultural producers' income from the Union funds, as well as the support within Pillar II of the CAP has grown in importance. Implementation of the referred principle appears both through the direct support system and for agricultural land owners as well as through the support under the Rural Development Programme for agricultural producers, agri-food pro-

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<sup>8</sup> A. Carrozza, *Lezioni di diritto agrario*, vol. 1, Milano 1988, p. 10.

<sup>9</sup> J. Hadault, *Droit rural*, Paris 1987, p. 28.

<sup>10</sup> Pursuant to Article 23 of the Republic of Poland Constitution dated 2.04.1997 (Journal of Laws: Dz. U. no. 78, pos. 483): "Podstawą ustroju rolnego państwa jest gospodarstwo rodzinne" [A family farm is the basis for a state agricultural system.] The referred principle violates no regulations of Article 21 and 23.

ducers, entrepreneurs conducting non-agricultural activities in rural areas, cultural institutions, public entities, first of all of communes and commune organizational units. Under this principle, protection without taking undue production risk and adequate social protection level, in particular with regard to social insurance. However, two other principles, it means one of protection for agricultural product consumer or a principle for providing agricultural production in accordance with environmental protection requirements explicitly indicate that agricultural law principles, at the same time the rules relating to agricultural agreements also fall within the consumer's protection and environmental protection, as well.<sup>11</sup>

The described criteria for separation of agricultural agreements based on agricultural law principles shall allow very broad approach to the categories of the agreements in concern. It disregards the personal situation criterion. This group of agreements can include not only agreements concluded by the agricultural producer and relating to the agricultural holding and its links to the market, but also agreements governing the rights and duties of entities which operate in rural areas.

Separation of agricultural agreements gives rise to consider in them a specific character of agricultural law relations. It should be manifested in assurance of protection to the agricultural producer, who is without a doubt the weaker contractual party, and at the same time, assurance of protection to the food products consumer. With regard to non-production functions of rural areas, the agricultural agreements shall protect the interests of entities providing social and environmental welfare. It is also necessary to take into account protection of the public interest. It appears first of all in shaping the contents of agreements and relatively numerous regulations which provide the public authority bodies with the stronger role than the ones which a contractor is entitled to. Balance achievement regarding that scope seems to be a fundamental demand.

### **3. Agricultural agreements – the selected substantive aspects**

Searching the criteria for separation of agricultural agreements in the Polish law it is to take into consideration not only the specific character of agricultural agreements, but also the regulation method applied in the referred

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<sup>11</sup> The principles in the Polish agricultural law doctrine formulated by A. Lichorowicz, in: *Prawo rolne* [Agricultural Law], ed. by A. Stelmachowski, Warsaw 2003, p. 20.

agreements. Referring to the second of the indicated aspects for separation of agricultural agreements, at the beginning it has to be stated that such agreements has a civil law character in the Polish law system, though they are not homogenous. In fact, a part of the agreements is subjectively or objectively connected with the administrative area. The phenomenon of agricultural law publicisation, understood as a process in which the increase of public and regulatory regulations concerning agriculture issues occurs, has been recognised in the agricultural law doctrine.<sup>12</sup> However, it does not mean that the agricultural agreements shall lose their primary, civil and legal character. The complementarity phenomenon of the civil law and administrative law method in one agreement is in the Polish agricultural law doctrine so clear that it requires noting in the paper.<sup>13</sup>

The Polish civil law fails to define the agreement normatively, and in particular the provisions of the Civil Code neither define a concept of the agreement, nor determine in the general way prerequisites required to conclude it. However, in the civil law doctrine is generally accepted that the agreement shall cover common intention of parties, focused to appear, modify or terminate legal effects.<sup>14</sup> The civil law systems in the European countries, including the Polish legal system accept the supremacy of the principle of freedom of contracts, which is a fundamental principal of the law of obligations. In the

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<sup>12</sup> Cf. R. Budzinowski, *Problemy ogólne prawa rolnego. Przemiany podstaw legislacyjnych i koncepcji doktrynalnych* [General issues of agriculture law. Changes in legislative basis and doctrinal concepts], Poznań 2008, p. 138 ff.

<sup>13</sup> The issue is noticed in the agricultural law doctrine inter alia by S. Prutis, *Relacje pomiędzy cywilną a administracyjną metodą regulacji prawnej na przykładzie instytucji prawa rolnego* [Relations between civil and administrative method of legal regulation on the example of agricultural law institution], in: *Współczesne problemy prawa prywatnego. Księga pamiątkowa ku czci Profesora Edwarda Gniewka* [Private law current problems. Memorial book dedicated to Prof. Edward Gniewek], Warsaw 2010; D. Łobos-Kotowska, *Charakter prawny umowy przyznania pomocy z Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich* [Legal character of the agreement for granting the aid from the European Agricultural Fund], SIA 2009, vol. 7, ed. by S. Prutis and T. Kurowska; eadem, *Umowy przyznawania pomocy z Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich* [Agreements for granting the aid from the the European the European Agricultural Fund for Rural Development], Warsaw 2013.

<sup>14</sup> According to a definition of A. Wolter it may be assumed that a contract is a legal action due to which factual situation is acknowledged, comprising at least two statements of will which intent to establish, modify or terminate civil law relation, and under the act the factual situation is linked with legal effects not only expressed in the statement of will but also not covered by such a statement, however resulting from the act, from the principles of community life or established habits (Article 56 of the Civil Code), in similar way W. Czachórski. *Zobowiązania* [Obligations], Warsaw 1995, p. 102.

Polish legal system the principle of freedom of contracts has been expressed in Article 353.1 of the Civil Code. According to the wording of the quoted provision, parties concluding an agreement may arrange a legal relation which links them at their own discretion, as long as its contents or goal were opposed neither the properties (character) of the relation, nor the act and the principles of community life. The principle in concern includes the freedom of a subject regarding their intent to enter into a contractual relationship, the freedom of choice of a counterparty, freedom to shape the contractual contents, freedom regarding formal requirements, including the requirements regarding a form of the legal action, freedom of choice of a mode to conclude the agreement.<sup>15</sup> Moreover, at least in formal construction, the parties of a civil law agreement are characterised by formal equivalence. It means that the parties of a legal relation are equal and none of them may independently decide about the rights and obligations of the counterparty. Besides, classification of the agreements to the civil law sphere depends also on proceedings element. Any agreements where the parties act in forms of civil law are – in the event of claims – subject to judicial decisions of common (civil) courts and they are settled in the civil law procedure. In practice of the agricultural law, there are not many agreements which ‘purely’ fulfil such assumptions.

In the agricultural law, it should be noted, beside the agreements of civil law character, a group of agricultural agreements which belong to a category of civil law agreements, however elements of administrative law are more or less clearly visible in them.

In the referred group of agreements, it has to be outlined the agricultural agreements concluded by agricultural administration bodies. In agriculture consensual activities forms of the administration play an increasingly important role. In particular, such tendency is illustrated in the issue for supporting rural development, where direction of changes in the administration char-

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<sup>15</sup> Cf. *inter alia* W. Czachórski et al., *Zobowiązania. Zarys wykładu* [Obligations. Framework], Warsaw 2009, pp. 145–146; P. Grzybowski, in: *System prawa cywilnego* [Civil Law System], Ossolineum 1985, vol. 1, p. 51 ff.; M. Safjan, *Kodeks cywilny. Komentarz* [Civil Code. Commentary] Articles: 1–449.11, ed. by K. Pietrzykowski, Warsaw 2008, p. 915 ff.; C. Żuławska, *Wokół zasady wolności umów* [Close in to the rule of the freedom of contract] [Article 353.1 of the Civil Code and interpretation of the custom], *Acta Universitatis Wratislaviensis* no. 1690, Prawo CCXXXVIII, Wrocław 1994, pp. 175–176; R. Trzaskowski, *Swoboda umów w orzecznictwie sądowym* [Freedom of contract in the court jurisdiction], *Przegląd Sądowy* 2002, no. 5; R. Trzaskowski, *Granice swobody kształtowania treści i celu umów obligacyjnych* [Boundaries of freedom in forming the contents and aim of obligatory agreements] and Article 353.1, Warsaw 2005; P. Machnikowski, *Freedom of contract by virtue of Article 353.1 of the Civil Code: Legal construction*, Warsaw 2006.



acter is clearly evident. It evaluates from powerful administration to service-providing administration.<sup>16</sup> At present agriculture is not mono-functional, supporting the production function of agricultural holdings, but it has multi-functional dimension consisting of environmental and social support of rural areas. The attainment of these new functions understood as public goods, causes necessity of support from means of public entities, who intend to implement this function. Moreover, participation in the Common Agricultural Policy (CAP) and possibility of use by the Polish beneficiaries of the CAP financial instruments indicates the need to create distribution mechanisms of certain benefits resulting from the participation. An agreement for granting the aid from the European Agricultural Fund for Rural Development is such a distribution instrument.<sup>17</sup>

The other area of use of the agreement as activity form of agricultural administration is management of agricultural real properties of the State Treasury governed by the regulations of Act on management of agricultural

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<sup>16</sup> The concept of service-providing administration was created on the grounds of German science, cf. *inter alia* E. Forsthoff, *Die Verwaltung als Leistungsträger*, Stuttgart–Berlin 1938, p. 8; E. Forsthoff, *Lehrbuch des Verwaltungsrechts. Allgemeiner Teil*, Munich 1966, p. 306; H. Groettrup, *Die kommunale Leistungsverwaltung*, Stuttgart–Berlin–Köln–Mainz 1973, p. 68 ff.; H. Maurer, *Allgemeines Verwaltungsrecht*, München 2006, p. 7, and I. Lipowicz, *Pojęcie administracji świadczącej w doktrynie zachodniemieckiej* [The concept of service-providing administration in Western Germany doctrine], in: *Regulacja prawna administracji świadczącej* [Legal regulation of service-providing administration], ed. by K. Podgórski, Katowice 1985, p. 130. The equivalent of this concept in the French science is the concept of public services, compare J. P. Langrod, *Instytucje prawa administracyjnego. Zarys części ogólnej* [Institutions of administrative law. The outlines of general part.], reprint Warsaw 2003, p. 213 ff.; F. Longchamps, *Współczesne kierunki w nauce prawa administracyjnego na Zachodzie Europy* [Current directions in administrative law education in the West of Europe], Wrocław–Warszawa–Kraków 1968, p. 36 ff. In the Polish administrative law doctrine, it is submitted that the merits of service-providing administration can be imagine in purposeful assistance, support to an individual and other entities, as well as in organization and maintenance in due condition of the public devices, i.e. all those means and devices which are indispensable to ensure life conditions, adequate to the civilisational level and development, as *inter alia* E. Knosala, *Pojęcie administracji świadczącej w polskiej literaturze prawa administracyjnego* [The concept of service-providing administration in the Polish legal administrative literature, in: *Regulacja prawna administracji świadczącej* [Legal regulation of service-providing administration], ed. by K. Podgórski, Katowice 1985, p. 16; V. Kuta, *Pojęcie działań niewładczych w administracji na przykładzie administracji rolnictwa* [The concept of non-decisive actions in the administration on the example of the agricultural administration], Wrocław 1969, pp. 11 and 47 ff.

<sup>17</sup> The agreement to grant the aid from EAFRD shall be governed by the relations of the rules 20.02.2015 on support for rural development co-financed by the European Agricultural Fund for Rural Development under the Rural Development Programme for the years 2014–2020, Journal of Laws: Dz. U. of 2015, pos. 349, as amended.

real properties owned by the State Treasury of 19 October 1991.<sup>18</sup> And in this case the Agricultural Property Agency (APA)<sup>19</sup> acts as a party of civil law relation, where the unanimous declaration of will of two parties is necessary to conclude the agreement. However, the situation is complicated due to the fact that the Agency acts also as a body fulfilling a function within the public administration scope, who performing particular statutory tasks, implements certain social functions.

Both the agreements concluded in real property trade, such as sales, rental/lease, exchange, and the agreement for granting the aid from the European Agricultural Fund for Rural Development substantially meet all the postulates referred to in the doctrine posed for the civil law agreement in the administration

However, determination of the character of such agreements in the Polish law system and their classification into the private law sphere should take place taking account of the preliminary features of the civil law agreement, concluded in administration, i.e. relationships with the administrative deed preceding its conclusion, far-reaching limit to the autonomy of the parties' will, civil law mode of disputes settlement occurred in connection with non-performance or undue performance of the agreement.

Conclusion of agreements is preceded by and administrative deed. This tendency is illustrated by the agreement for granting the aid from EAFRD. The legislator combined the mechanism of one-side administrative act and civil law agreement in a specific way. According to the standpoint of jurisprudence, the decision on granting the aid shall be deemed as necessary condition to conclude the agreement and its effectiveness. Though the regulations of the Act on supporting rural development with the use of the EAFRD funds within Rural Development Programme for the years 2014–2020 stipulate no settlement for the administration body, the body undoubtedly undertakes certain activities, in particular it notifies an applicant about granting the aid and fixes him a deadline to conclude the agreement. Ineffective lapse of the deadline causes issue of an act on refusal to grant the aid. Granting the aid follows preparatory activities intended to determine a beneficiary of the aid, the aid value and conditions for granting. But the administrative act is not the source for liability. The proper source for the rights and obligations is the civil law agreement.<sup>20</sup> Some representatives of the doctrine emphasise specificity of

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<sup>18</sup> It means Journal of Laws: Dz. U. of 2015, pos. 1014, as amended.

<sup>19</sup> Agricultural Property Agency is a state legal entity who exercises tasks with regard to management of agricultural real properties owned by the State Treasury.

<sup>20</sup> Cf. P. Breyer, *Przeniesienie własności nieruchomości* [Assignment of real properties ownership], Warsaw 1976, p. 308 ff.; P. Grzybowski, *Akt administracyjny jako źródło stosun-*

such administrative acts<sup>21</sup> and point out their role in ensuring stronger stability of the arisen legal relations.<sup>22</sup>

Recognition of the agreement as grounds for the liability does still not prejudge to what extent the agreements can be freely concluded by the counterparties, then within what range the free rules for agreements shall be applied according to rules under Article 353.1 of the Civil Law. Freedom in concluding the agreements is obviously non-absolute and experiences certain restrictions, however within the limits of the law, contractual obligation relations may be formed freely. Restrictions of the freedom of contract consist *inter alia* in that almost in all cases the administration body is only allowed to initiate a procedure to conclude the agreement. The procedure is usually started by more or less formalised invitation, a call for tenders or an offer directed simply to the named addressee. A potential counterparty may not initiate the procedure to conclude the agreement. It is primarily clear, by virtue of the regulations of Act on supporting rural development with the use of funds of the EAFRD, whilst implementing entities, organizing competition, invite potential beneficiaries to submit applications. Likewise, the regulations on management of real properties owned by the State Treasury, which provide that just the Agency shall prepare a list of real properties intended for rent, and then rent them under full compliance with the regulations of the Act and ordinances of the Minister of Agriculture and Rural Development, give the initia-

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*ków obligacyjnych. Uwagi na tle art. 397–404 k.c.* [Administrative act as the source for obligatory relations. Comments to the background of Articles: 397–404 of the Civil Code], Państwo i Prawo 1966, no. 9, p. 262 ff.; though, it shall be also acknowledged the contrary stand-point, where the administrative act is the constitutive act setting up the new legal position, P. J. Sobal, *Rola decyzji administracyjnej w kształtowaniu stosunków cywilnoprawnych. Na przykładzie gospodarki terenami urbanistycznymi* [Role of administrative decisions in shaping civil law relations. By the example concerning management of urban lands], Rzeszów 1974, p. 115 ff.

<sup>21</sup> It is provided *inter alia* by E. Łętowska and J. Łętowski considering public law way to appoint purchasers of real properties under the individual administrative act, cf. E. Łętowska, J. Łętowski, *Stosunek pomiędzy aktem administracyjnym a opartą na nim umową cywilnoprawną. Komentarz do uchwały pełnego składu Izby Cywilnej Sądu Najwyższego z dnia 25 kwietnia 1964, (III CO 12/64)* [Relation between the administrative act and the civil law agreement based on it. Commentary to the resolution of full bench of the Civil Chamber of the Supreme Court dated 25 April 1964 (III CO 12/64)], in: *Funkcjonowanie administracji w świetle orzecznictwa* [Administration functioning in the light of the jurisdiction], ed. by J. Starościak, J. Łętowski, vol. 1, Warsaw 1967, p. 93.

<sup>22</sup> Cf. A. Stelmachowski, *Glosa do wyroku Naczelnego Sądu Administracyjnego* [Gloss to the decision of the Supreme Administrative Court of the Republic of Poland] of 21 August 1981, file reference II SA 108/81, *Orzecznictwo Sądów Polskich* [Judicial Decisions of the Polish Courts] 1983, vol. 1, p. 50.

tive regarding the matter concerned to the administration body. As a rule, the rent is provided following procurement procedure, and without any call for tenders, only where the legislation clearly provides for it. Similar rules relate to the sales of the state lands. In that case the regulations relating to procurement procedure shall be also applied.

Parties' freedom in forming the contents of agreements in administration restricted indeed. Both the agreements on management of state agricultural real properties and for granting the aid from EAFRD are strongly restricted by intrusion of the legal administrative regulations.<sup>23</sup> In the first case, obligatory elements of the agreement are determined by mandatory regulations of the Act on management of agricultural real properties owned by the State Treasury as well as the implementing ordinances issued on the basis of the cited Act, and such elements are as follows: a price of real property, opportunity for payment in instalments, a way of determination of the rent in the agreement, its amount and the time limit for payment. Much further restrictions have been applied by the legislator in the agreement for granting the aid from the EAFRD funds. It is an adhesion contract concluded on a form prepared by implementing entities that whilst forming it should include the restrictions introduced by mandatory regulations of the Act and the implementing acts determining detailed terms for granting the aid under particular activities of the Rural Development Programme for the years 2014–2020. The regulations of the referred legal acts determine elements of the agreement very often in details. With regard to the agreement under discussion the element of supremacy of the public law entity over its counterparty. It reflects in all stages: at conclusion and at fulfillment of the agreement. However, this feature has no impact on to the change of a character of such agreement and granting it the administrative character. Thus, the both parties act in the boundaries of freedom of contract stipulated by the legal regulations, focused on to implementation of the public administration counterparty's interests and in the broad context of public interest of the other party. It is not in contradiction with the rule of the parties' autonomy. Substantive equivalence of the parties is after all illusory, as the rule of freedom is in fact meaningless, if we consider the effects resulting from resignation to conclude the adhesion contract for granting the aid from the EAFRD funds. Similarly, in the agreements covered

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<sup>23</sup> Cf. M. Kotulski, *Normy kontraktowe jako przejaw tworzenia i stosowania prawa administracyjnego* [Contractual norms as manifestation of development and application of the administrative law], in: *Źródła prawa administracyjnego* [Sources of the administrative law, Conference on the occasion of 100th anniversary of birthday of Professor Jerzy Stefan Langrod. The Jagiellonian University – 23 April 2004], ed. by J. Zimmermann, P. Dobosz, Cracow 2004, p. 147.

by the Act on management of agricultural real properties owned by the State Treasury, the factual powerful element is commonly present.

The second group of agricultural agreements include administrative elements, however they present not so significant importance. They consist in linking the civil law agreement and obtaining the particular result in public regulatory sphere. In that case, the civil law agreement is a source of rights and obligations, which conclusion involves gaining some benefits with character which is unequivocally the public and regulatory one. An example can be found in a cultivation contract, the conclusion of which conditions to obtain some payments under the direct support schemes.<sup>24</sup> In that case, the cultivation contract has become a legal instrument used to influence organisation of some agricultural products market, while at the same time supporting the agriculture for the EU funds.<sup>25</sup> Receiving payments within the direct support systems, in conjunction with production of some plants shall depend on conclusion of an agreement by a farmer, in which he commits himself to produce and deliver a specified quantity of agricultural products from a definite land area to agricultural producers, a group of fruits and vegetables producers, organization of agricultural producers or an association of agricultural producers, of which he is a member, and such a group, an organisation or an association commits itself to collect the referred agricultural products in the agreed time limit, pay for them and use them for processing. It *inter alia* refers to the payment connected with area of the production of starch potatoes, tomatoes, sugar beet. The agreements concluded by agricultural producers are of mixed nature for which adequate regulations on cultivation shall be applicable.<sup>26</sup>

The agreements regulating legal forms of interaction and cooperation in the agriculture, in particular the agreements concerning the rules for establishing and operation of the agricultural producers groups<sup>27</sup> have similar character. A statute or an agreement which constitutes setting up of an agricultural

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<sup>24</sup> Act on payments within the framework of direct support scheme of 5 February 2015, Journal of Laws: Dz. U. 2015, pos. 308, as amended.

<sup>25</sup> That new function of the cultivation contract was already noted in 2004 by A. Stelmachowski, and then M. Korzycka-Iwanow complemented the considerations in that scope. (A. Stelmachowski, in: *System prawa prywatnego*, vol. 7: *Prawo zobowiązań – część szczegółowa* [Private law system, Contract law – Detailed part], 2nd edition, Warsaw 2004; M. Korzycka-Iwanow, in: *System prawa prywatnego*, vol. 7: *Prawo zobowiązań – część szczegółowa* [Private law system, vol. 7: Contract law – Detailed part], 3rd edition, Warsaw 2011, p. 324 ff.

<sup>26</sup> Act on Payments within the Framework of Direct Support Scheme of 5 February 2015 (i.e. Journal of Laws: Dz. U. 2015, pos. 308, as amended).

<sup>27</sup> Act on Agricultural Producers' Groups and their Unions of 15 September 2000, Journal of Laws: Dz. U. 2000, no. 88, pos. 983, as amended.

producers group shall be obviously of civil law character, then it should be disclosed in a register of agricultural producers group held by a voivodeship marshal. Therefore, only conclusion of the civil law agreement which is subject to registration in the administrative mode shall condition receiving the support from EAFRD.

#### **4. Agricultural agreements– chosen procedural aspects**

Any cases under the agricultural agreements classified as the civil law agreements shall be submitted for resolution by common courts and shall be resolved in civil procedure. The thesis on a civil law character of the agricultural agreement justifies claiming damages before the civil courts under the referred agreements. Also when, the administration body is a contractual party, such a body shall not act in powerful way, and is one of parties to the agreement, who have contradictory dispute between each other, which is characterized by equivalence of the parties.<sup>28</sup> However, the Polish legal system has not established a special system of agricultural courts which would decide basing on specific civil procedure. Moreover, the fundamental change introduced to the civil procedure on 3 May 2012 should also be noted, when amendment of the Code of Civil Procedure entered into force.<sup>29</sup> It has implemented a series of changes to the civil procedure, including the annulment of the provisions from section IVa, chapter 1 relating to commercial proceedings. Then, before the amendment, just under the procedural rules agricultural agreements were substantially excluded from the regimen relating to economic activities. Pursuant to the repealed regulation of Article 479.2 § 2 item 2 of the Code of Civil Procedure, the cases where at least one of the parties was an individual farmer who within conducted production activities in the agriculture, was involved in plant and animal production, market gardening and fruit farming were not submitted to commercial courts.

In the amended civil procedure, the legislator with the repeal of the regulations on proceeding in commercial cases, has applied more stricte legal rig-

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<sup>28</sup> Judicial decisions of the courts regarding a situation where a beneficiary demands a payment of an amount for granted assistance is rather poor. Attention should inter alia be paid to the decision of Voivodeship Administrative Court (WSA) in Białystok dated 22.11.201: V SA/Wa 2013/1, the base of decisions of administrative courts on the website: [www.orzeczenia.nsa.gov.pl](http://www.orzeczenia.nsa.gov.pl), and the decision of WSA in Gorzów Wielkopolski of 8.06.2011, file reference: I SAB/Go 7/11, Lex no. 1090982.

<sup>29</sup> Act on of the Act of 16 September 2009 amending the Code of Civil Procedure and some other Acts, Journal of Laws: Dz. U. 2011, no. 177, pos. 1054.

orous, in particular regarding to preclusion and spread it out for the whole civil procedure, making no distinction between professionals (entrepreneurs) and non-professionals. The legislator has also resigned from the special regulation concerning the farmers.

And the cases with participation of farmers have been submitted for resolution by commercial divisions. As, in view of the above mentioned amendment of the Code of Civil Procedure, there has not been modified Article 1 of the Act on examination by courts of commercial cases of 25 May 1989,<sup>30</sup> under which examination of commercial cases is entrusted to the district and regional courts, where separate organizational units (commercial courts) are being established. Cognition of such courts is spread out for commercial cases, defined in Article 2 sec. 1 of the cited Act. They include the cases arisen from civil relations between entrepreneurs within the scope of economic activity conducted by them, and besides other ones specified in that regulation. In the current legal status, submission of the case relating to the agricultural agreement, where one of the parties is an agricultural producer and the other one is an entrepreneur, so jurisdiction of commercial court shall depend on granting an agricultural producer the status of an entrepreneur.

With broad approach to separation of the agricultural agreement where there are agreements relating to any aspects of agricultural area and its users functioning, a party to some of them will be entities to which the status of an entrepreneur cannot be assigned. Apart from the production function of agricultural area, it is also essential to recognize other aspects connected with rural development. That multi-functional dimension of agricultural areas where other functions shall be considered like the functions regarding environmental protection and the social tasks results in the extending the catalogue of entities which can be parties to the referred agreements. In respect of certain agreements, a party to them can be communes, public agencies acting for the benefit of the State Treasury, forest districts, cultural institutions. In such cases civil divisions in the common courts shall be competent.

## 5. Conclusions

The carried out which was as attempt to indicate the criteria for separation of agricultural agreements does not aspire to full elaboration of the issue undertaken. However, the deliberations taken in material-legal and process

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<sup>30</sup> Journal of Laws: Dz. U. 1989, no. 33, pos. 175, as amended.

sphere shall allow to formulate comments both on general character and in details, as well.

Firstly, *de lege lata*, the Polish legal system separation of agricultural agreements category has not resulted in the legislative sphere. Representatives of the agricultural law doctrine, both Western-Europe and the Polish call for establishing the separation criteria of an agricultural agreement. It will enable their systematics, in particular with reference to the method applied to regulation of legal relations and specific character.

Secondly, taking account of the specific characteristics of such agreements should result in assurance of the protection to an agricultural producer, who is the weaker contractual party, including while ensuring the protection of food products consumers. With regard to the agreements where an entity acting public functions is a party, it is however necessary to take into consideration the protection of public interest, however including assurance of the relevant protection of the other contractual party, which provides non-production: environmental and social functions.

Thirdly, the personal situation criterion for separation of agricultural agreements and its limitation to the agreements, where one of a party is an agricultural producer, taking in account the subject-matter scope of the rights and obligations connected with such a producer's activity seems to be currently insufficient. Extension of the CAP by pillar II – rural development, shall require the more modern approach and recognition as the agricultural agreement also the ones, where a party is another entity than an agricultural producer – an entity operating in rural areas.

Fourthly, the issues of agricultural agreements should cover not only legal law matters, but also the procedural issue connected with claiming damages under the agreements in concern.

## LEGAL CHARACTER OF AGRICULTURAL AGREEMENTS IN THE POLISH LEGAL SYSTEM

### S u m m a r y

The issue of agricultural agreements is strictly related to the criteria for the separation of agricultural law present in the Polish and West-European doctrine. Thus, the adoption of a specific regulation of civil law agreements concerning agricultural relations was the impulse for the development this a separate branch of the law to regulate matters in agriculture.



The paper aims to present the legal character of agreements concluded by farmers and other entities conducting economic activity in rural areas. It does not include any detailed analysis of the legal solutions assumed within particular agreements, but is an attempt to answer the question whether a separate category of agreements – agricultural agreements has its separate place in the Polish legal system, and if the answer is affirmative, to identify the criteria for this separation.

Agricultural agreements have been presented taking into account the civil law and administrative law methods that have been applied to regulate legal relations between them. The paper also discusses substantive matters as well as procedural issues connected with the process of seeking damages under these agreements.

## **LA NATURA GIURIDICA DEI CONTRATTI AGRICOLI NELL'ORDINAMENTO GIURIDICO POLACCO**

### **R i a s s u n t o**

La questione dei contratti agricoli è strettamente legata ai criteri di distinzione del diritto agrario adottati dalla dottrina polacca e di stampo europeo occidentale. È l'adozione di una regolazione specifica in merito ai contratti di diritto civile, che riguardano relazioni in agricoltura, a sottendere la distinzione di questa branca del diritto.

L'obiettivo di questo articolo è di determinare la natura giuridica dei contratti stipulati da agricoltori e anche da altri soggetti che operano nelle zone rurali. Nell'articolo non è stata eseguita un'analisi dettagliata delle soluzioni giuridiche adottate nell'ambito dei contratti specifici, si è piuttosto tentato di rispondere alla domanda se nell'ordinamento giuridico polacco sia avvenuta la distinzione di una categoria separata di contratti, i contratti agricoli, e qualora la risposta fosse affermativa, di indicare i criteri di distinzione.

Nell'articolo è stata effettuata una sistematizzazione dei contratti agricoli, in particolare in base al metodo adottato nella regolazione dei rapporti giuridici: di natura civilistica e amministrativa. Le considerazioni includono non solo questioni di diritto sostanziale, ma anche la problematica procedurale, legata ai ricorsi sorti in base a tali contratti.